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11 MORGAN SERVICES, INC., a Delaware
12 corporation (erroneously named as an Illinois
13 corporation)

14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

16 WILLIAM SWIMAN, individually and on
17 behalf of all other persons similarly
18 situated and on behalf of the general public,

19 Plaintiff,

20 v.

21 MORGAN SERVICES, INC., an Illinois
22 corporation; and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. '08 CV 0806 WQH NLS
Judge:

NOTICE OF REMOVAL OF ACTION TO
FEDERAL COURT PURSUANT TO 28
U.S.C. § 1441 (FEDERAL QUESTION AND
DIVERSITY JURISDICTION)

Complaint Filed: March 20, 2008

FILED
08 MAY -2 PM 12:44
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

NOTICE OF REMOVAL

TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that Defendant Morgan Services, Inc. ("Morgan Services") hereby removes to this Court the State Court action described below based on federal question and diversity of citizenship jurisdiction.

BACKGROUND

1. On or about March 20, 2008, an action was commenced in the Superior Court of the State of California for the County of San Diego, entitled *William Swiman, individually and on behalf of all other persons similarly situated and on behalf of the general public v. Morgan Services, Inc., an Illinois corporation; and Does 1 through 100, inclusive*, Case No. 37-2008-00080260-CU-OE-CTL (the "Action"). True and correct copies of all pleadings, process, and orders served or filed in the Action are attached to the Notice of Lodgment ("NOL") filed herewith; Exhibit "A" to NOL is a copy of the Complaint.

2. On April 2, 2008, Morgan Services acknowledged and accepted service of process of the Summons and Complaint in the Action. (Exhibit "E" to NOL.)

3. The Action asserts claims on behalf of named Plaintiff William Swiman and a putative class of current and former California employees of Morgan Services. As alleged in the Complaint, the class action seeks:

"unpaid overtime and double-time compensation and interest thereon; compensation for missed meal and rest periods, compensation for failure to furnish accurate wage statements, waiting time penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs...and injunctive relief and restitution on behalf of all benefits Defendants have enjoyed from their failure to pay overtime and double-time compensation, [and] their failure to provide adequate meal and rest breaks, under Business and Professions Code §§ 17200 et seq."

(Complaint ¶ 1.)

THE COURT HAS FEDERAL QUESTION JURISDICTION

4. This Court has original jurisdiction over the Action under 28 U.S.C. section 1331 and the Action is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. section 1441, in that it is a civil action arising under a federal statute, 49

1 U.S.C. section 504, and the implementing regulations, 49 C.F.R. section 395.1 et seq. The
 2 Complaint alleges that Plaintiff's wages and hours are regulated by the California Industrial
 3 Welfare Commission Wage Order No. 6-2001, including the employees' status as "non-exempt"
 4 employees, their days and hours of work and meal and rest breaks. (Complaint ¶ 2.) From this
 5 statement it is clear that one of the elements of Plaintiff's claims is that the drivers were in fact
 6 regulated by Wage Order No. 6-2001.

7 5. However, Wage Order No. 6-2001, Section 3 (J), specifically provides that the
 8 "Hours and Days of Work" provisions of Wage Order No. 6-2001, "are not applicable to
 9 employees whose hours of service are regulated by: (1) the United States Department of
 10 Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service
 11 Drivers."

12 6. To establish his claims, Plaintiff must prove that the Wage Order is applicable. In
 13 particular, to prove his first cause of action for failure to pay overtime and double-time Plaintiff
 14 must prove he, as a Morgan Services driver (a "Service Representative", see Declaration of Glenn
 15 Teixeira in Support of Motion filed herewith ("Teixeira Decl.") ¶ 4), is not regulated by the
 16 Department of Transportation, Code of Federal Regulations, Title 49, Sections 395.1 to 395.13,
 17 *Hours of Service Drivers*.

18 7. Plaintiff's first cause of action requires a determination of whether Wage Order
 19 No. 6-2001 is applicable and therefore it is a prerequisite to that determination to determine
 20 whether the drivers are regulated by 49 C.F.R. sections 395.1 et seq. (authorized by 49 U.S.C.
 21 section 504), which requires resolution of a significant question of federal law, i.e. whether
 22 Plaintiff Swiman worked in interstate commerce, and meets the criteria specified in the
 23 regulations under the federal statutes. Regulation of highway safety in interstate commerce is a
 24 substantial federal interest expressed in the Motor Carrier Safety provisions of 49 U.S.C. section
 25 31501 et seq., meriting a federal forum to amply and uniformly promote that interest.

26 8. Plaintiff and the Service Representatives, deliver some specially ordered garments,
 27 mats and linen, specifically customized to the requirements of many of Defendant's customers,
 28 where such deliveries constitute the last leg of a continuous interstate transit originating at an out-

1 of-state manufacturing facility. Such merchandise is ordered from the manufacturer, specifically
 2 for the customer and its individualized requirements, including uniforms with individual
 3 employees' names affixed and in the sizes of such individuals, and door mats with the customer's
 4 name or logo imprinted. (Teixeira Decl. ¶ 6.) Thus, such Service Representatives are engaged in
 5 interstate commerce and subject to federal regulation. See *Reich v. American Drivers Serv.*, 33
 6 F.3d 1153, 1155, n.3 (9th Cir. 1994). *Long Beach Banana Dist. v. Atchison T.&S.F.Ry. Co.*, 407
 7 F.2d 1173 (9th Cir. 1969).

8 9. Courts have found that "[u]nder the 'well-pleaded complaint' rule, the federal
 9 question, which invokes federal jurisdiction, must appear from the complaint and not from any
 10 federal defense [including preemption] the defendant might raise to defeat the claim." *Bright v.*
 11 *Bechtel Petroleum, Inc.*, 780 F.2d 766, 769 (9th Cir. 1986) (citing *Franchise Tax Bd. v. Constr.*
 12 *Laborers Vacation Trust*, 463 U.S. 1, 10 (1983)). The federal question at issue here, whether
 13 Plaintiff is regulated by federal law, is not raised as a defense. Plaintiff has pleaded and must
 14 prove his days and hours of work are regulated by Wage Order 6-2001 which necessarily depends
 15 on whether drivers are subject to the Department of Transportation regulations because if they
 16 are, the provisions are inapplicable. Therefore, Plaintiff's first cause of action requires resolution
 17 as an essential element of the claim of a significant and substantial federal question – whether
 18 Plaintiff is regulated as a driver by federal law rather than the state Wage Order. The first cause
 19 of action thus arises under federal law and this action may be removed to this Court by Defendant
 20 pursuant to the provisions of 28 U.S.C. section 1441. The Court has supplemental jurisdiction
 21 under 28 U.S.C. section 1367 over the remaining related causes of action brought under state law.

22 THE COURT HAS DIVERSITY JURISDICTION OVER THIS ACTION

23 UNDER 28 U.S.C. § 1332(a)

24 10. The Court has original jurisdiction over the Action under 28 U.S.C. section
 25 1332(a) because, the controversy is between real parties in interest who are citizens of different
 26 states (California for the named Plaintiff and Delaware and Illinois for Morgan Services), and the
 27 amount in controversy exceeds the sum of \$75,000 for the named Plaintiff, exclusive of interest
 28 and costs. The Action is one which may be removed to this Court by Defendant pursuant to 28

1 U.S.C. 1441, as Defendant is not a citizen of California, the State in which the Action was
 2 brought. There would be less than 100 members of the putative class. (Teixeira Decl. ¶ 7.)

3 THE PARTIES HAVE DIVERSITY OF CITIZENSHIP

4 11. Complete diversity of citizenship exists between Plaintiff and Defendant because:

5 (a) As alleged in the Complaint, named Plaintiff Wiliam Swiman is a resident
 6 and citizen of the State of California. (Complaint ¶¶ 9, 10.)

7 (b) Morgan Services is incorporated in Delaware. Morgan Services' corporate
 8 headquarters are in Illinois and it conducts approximately 13% of its business in that state.
 9 Morgan Services conducts the majority of its business, approximately 30%, in Ohio. (Teixeira
 10 Decl. ¶ 3.) Morgan Services therefore is a citizen of Delaware and Illinois. 28 U.S.C. section
 11 1332(c)(1) ("a corporation shall be deemed to be a citizen of any State by which it has been
 12 incorporated and of the State where it has its principal place of business").

13 12. There are no other named parties identified in the Action, and the citizenship of the
 14 unidentified "Does" must be disregarded for purposes of removal jurisdiction. 28 U.S.C. section
 15 1441(a) ("the citizenship of defendants sued under fictitious names shall be disregarded").

16 THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000 FOR THE NAMED PLAINTIFF

17 13. Plaintiff fails to specify a damages sum. However, this Court may consider
 18 whether it is "facially apparent" from the Complaint that the jurisdictional amount is in
 19 controversy. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

20 14. Plaintiff's hourly wage was \$10.91 during the eighteen (18) weeks in which he
 21 worked for Morgan Services. (Teixeira Decl. ¶ 7.) The Complaint alleges claims for missed
 22 meal and break periods, for which a penalty in the amount of one hour's pay is assessed for each
 23 missed meal and each missed break for each day worked in the eighteen (18) weeks Plaintiff
 24 worked for Morgan Services, which could reach \$1,963.80. (Declaration of Arlene Prater
 25 ("Prater Decl.") ¶ 4A.) The Complaint also seeks unpaid overtime wages calculated at the
 26 overtime rate (one and a half times the hourly rate) for an estimated twenty (20) hours per week
 27 for eighteen (18) weeks for a total of \$5,893.20, as well as ten (10) hours of unpaid overtime at
 28 double-time, for hours worked in excess of twelve (12) hours per shift for a total of \$3,927.60

1 (Prater Decl. ¶¶ 4C, D). Moreover, claims for waiting time penalties, which is a full day's pay for
2 each day wages were due but were not paid, could be up to a maximum of thirty (30) days which
3 totals \$2,618.40, using an eight-hour (8) work day. (Prater Decl. ¶ 4E). Additionally, Plaintiff
4 seeks a penalty for eighteen (18) weeks of failing to provide wage statements with hours worked
5 (\$50 first week and \$100 for each subsequent pay period), which would total \$1,750.00 in
6 damages. (Prater Decl. ¶ 4B). The potential total for Plaintiff's alleged Wage Order and Labor
7 Code violations therefore totals \$16,153.00.

8 15. Plaintiff also seeks restitution for a Business and Professions Code violation for
9 unlawful and unfair business practices under Section 17200 et seq. The estimated restitution for
10 such a claim is \$16,153.00 based on the totals for claims for unpaid wages, missed meals and
11 breaks and penalties as set forth above. (Prater Decl. ¶ 4F.)

12 16. Attorneys' fees for this Action will cause the named Plaintiff's amount in
13 controversy to exceed the \$75,000 amount in controversy requirement. The putative class cannot
14 satisfy the certification requirements of Federal Rules of Civil Procedure, Rule 23(b)(3),
15 providing that a class be certified only where questions of law or fact common to members of the
16 class predominate and a class action is superior to other available methods for fairly and
17 efficiently adjudicating the case. Therefore, all potential attorneys' fees in this Action may
18 properly be assessed to the named Plaintiff as only his individual claim will survive.

19 17. The putative class of Morgan Services Service Representatives is not proper for
20 certification based on *Brown v. Federal Express Corp.*, 2008 WL 906517 (C.D. 2008) where a
21 putative class of delivery drivers sought certification of their class claims for missed meal and
22 break periods under California law. The court held that "Plaintiffs may prevail only if they
23 demonstrate that FedEx's policies deprived them of those breaks. Any such showing will require
24 substantial individualized fact finding." *Id.* at *6. The court further determined that the drivers'
25 duties varied significantly, and that the ability to take breaks and meal periods were affected by
26 the differences in job duties. These job duty differences included the number of stops made by
27 different types of drivers, which varied between one hundred (100) and twelve (12) stops per day,
28 and well as the distances traveled by each driver, the different ebbs and flows in drivers' work

1 days as well as differences in delivery deadline times. Based on these factual differences, the
2 court stated:

3 "Plaintiffs propose no method of common proof that would
4 establish that FedEx's policies prevent drivers from taking required
5 breaks, regardless of their individual circumstances. Although
6 Plaintiffs assert in the Complaint that FedEx's policies put such
7 pressure on drivers that they cannot take required breaks, they
8 propose no means of proving this claim on a class-wide basis. The
9 Court thus concludes that the highly individualized factual inquiries
10 just described predominate over the few legal and factual issues
11 shared by the proposed class." *Id.* at 7.

12 The fact that individual issues of fact predominated the case, also led the court to conclude that
13 the class action was not the superior method of adjudication, as required by Rule 23(b)(3) because
14 the individual issues of fact render the class action unmanageable. *Id.* at *8. Therefore, class
15 certification was denied.

16 18. As in *Brown*, the putative class of Morgan Services drivers is not proper for
17 certification. The job duties and schedules vary to the extent that individual questions of fact will
18 predominate over their class claims. Morgan Services drivers make anywhere from four (4) to
19 twenty-five (25) stops per shift, and drove anywhere between fifteen (15) miles to two hundred
20 (200) miles during a shift. (Teixeira Decl. ¶¶ 9A, B.) The distances between each delivery can
21 also vary between the stops being directly next door to each other or to being more than ten (10)
22 miles apart. The hours in which they worked varied as their start times ranged from 3:00 a.m. to
23 8:30 a.m. (Teixeira Decl. ¶¶ 9C, D.) The time deadline differences between drivers vary as it
24 depends on the needs of the customers, and the time sensitivity of deliveries can also vary from
25 day to day for each individual driver. (Teixeira Decl. ¶ 9E.) Moreover, the number of times the
26 drivers must return to the home location to pick up additional product or drop of a load of soiled
27 products vary between each driver as well as for each individual driver on a daily basis based on
28 the needs of the customers. (Teixeira Decl. ¶ 9F.) The volume of product and the number of
stops made by each driver may vary on a daily basis due to variance in the customer demand, and
unexpected additional deliveries may be necessary during any given shift. (Teixeira Decl. ¶ 9G.)
It is these individualized facts that a Service Representative would use to claim that they were
precluded by Defendant's policies from taking meal and break periods. Additionally, the putative

1 class claims they worked overtime for which they were not compensated. This would also
 2 necessarily involve significant individualized factual issues which would predominate. The Court
 3 would in essence be required to conduct mini-trials for each Plaintiff, which the Court recognized
 4 in *Brown* made it inappropriate for class certification. There is no way to make these
 5 determinations on a class-wide basis as held by the court in *Brown*. Therefore, the class will not
 6 be certified.

7 19. Because the class is not certifiable, the attorneys' fees for Plaintiff to pursue his
 8 individual claims would exceed \$75,000. (Prater Decl. ¶6.) The attorneys' fees combined with
 9 the estimated damages for Plaintiff's Wage Order and Labor Code alleged violations and
 10 restitution for the Business and Professions Code alleged violation cause the amount in
 11 controversy to exceed the \$75,000 requirement.

12 MORGAN SERVICES HAS COMPLIED WITH THE REQUIREMENTS FOR REMOVAL

13 20. Morgan Services has filed this Notice of Removal within thirty (30) days of April
 14 2, 2008, the effective date of service of the initial pleading in the Action. See 28 U.S.C.
 15 § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 348 (1999) (30-day removal
 16 period runs from formal service of summons and complaint).

17 21. Morgan Services has given written notice of the filing of this Notice of Removal to
 18 the parties and has filed a copy of the Notice and supporting papers with the Clerk of the San
 19 Diego County Superior Court, as required by 28 U.S.C. section 1446(d).

20 22. Morgan Services has properly removed the Action to this Court under 28 U.S.C.
 21 section 1441, because the United States District Court for the Southern District of California
 22 embraces the place where the Action was pending.

23 23. Morgan Services reserves, and does not waive, any objection it may have to
 24 service, jurisdiction, or venue, and any and all other defenses or objections to the Action.

25 ////

26 ////

27 ////

28 ////

CONCLUSION

24. WHEREFORE, further proceedings in the Action should be discontinued, and the Action should be removed to the United States District Court for the Southern District of California.

Dated: May 2, 2008

BEST BEST & KRIEGER LLP

By: 

ARLENE PRATER
ALISON D. ALPERT
Attorneys for Defendant
MORGAN SERVICES, INC.

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
SAN DIEGO

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

WILLIAM SWIMAN, individually and on behalf of all other persons similarly situated and on behalf of the general public.

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address and Telephone Number)

Jason E. Baker, Esq., SBN 197666
Brent Jex, Esq., SBN 235251
Keegan & Baker, LLP
4370 La Jolla Village Drive, Suite 640
San Diego, CA 92122
Telephone: (858) 552-6750; Facsimile: (858) 552-6749

DEFENDANTS

MORGAN SERVICES, INC., an Illinois corporation; and DOES
1 through 100, inclusive

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Arlene Prater, Esq., SBN 6710
Alison D. Alpert, Esq., SBN 199257
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101
Telephone: (619) 525-1300; Facsimile: (619) 233-6118

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Payment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R. R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1441

Brief description of cause:

Action for unpaid overtime, missed meal and rest periods and other wage and hour claims.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

150454 - MB

**May 02, 2008
12:48:31**

Civ Fil Non-Pris

USAO #: 08CV0806 CIVIL FILING
Judge.: WILLIAM Q HAYES
Amount.: \$350.00 CK
Check#: BC68662

Total-> \$350.00

FROM: WILLIAM SWIMAN VS
MORGAN SERVICES, ET AL